



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R08-OAR-2021-0004; FRL-8789-02-R8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants;

Colorado; Control of Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Clean Air Act (CAA or the “Act”) section 111(d) state plan submitted by the Colorado Department of Public Health and Environment (CDPHE or the “Department”) on March 23, 2021. This state plan was submitted to fulfill the requirements of the CAA and is responsive to the EPA's promulgation of Emission Guidelines and Compliance Times (EG) for existing municipal solid waste (MSW) landfills. The Colorado state plan establishes performance standards and other operating requirements for existing MSW landfills within the State of Colorado and provides for the implementation and enforcement of those standards and requirements by the Department. The EPA is taking this action pursuant to the CAA.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2021-0004. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard

copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Allison Reibach, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-TRM, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6949, reibach.allison@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our July 1, 2021 proposed rule (86 FR 35044). In that document we proposed to approve the Colorado CAA section 111(d) state plan for existing MSW landfills as the plan was submitted by the CDPHE on March 23, 2021. The EPA’s analysis of the Colorado state plan may be found in the aforementioned proposed rule and the technical support document (TSD) associated with the docket for today’s action. Comments on the EPA’s proposed approval of the state plan for existing MSW landfills were due on or before August 2, 2021. We received feedback from two commenters during the public comment period opened by the proposed rule. Our responses to the comments are addressed in section II. below.

II. Response to Comments

Comment: Commenter, which represents solid waste management professionals, stated that Colorado’s state plan should include all standards outlined in the Federal Plan Requirements for MSW Landfills (40 CFR part 62, subpart OOO), as the Colorado state plan currently includes standards from the Emission Guidelines and Compliance Times for MSW Landfills (40 CFR part 60, subpart Cf). The commenter cites significant differences for “legacy controlled landfills,” between the state plan and the federal plan, with the federal plan exempting “legacy-controlled landfills” from tasks that they completed under 40 CFR part 60, subpart WWW; subpart GGG of

this part; or a state plan implementing 40 CFR part 60, subpart Cc. Without these exemptions, the commenter asserts that Colorado's plan indirectly imposes additional administrative requirements for these "legacy controlled landfills" that would not apply if Colorado adopted the language of the federal plan. The commenter urges EPA to ask the CDPHE to adopt the federal plan standards and withdraw their state plan.

Response: Section 111(d) of the CAA gives EPA the authority to prescribe regulations for states to submit plans that establish standards of performance for certain existing sources of air pollutants. Section 111(d) plans address existing sources for any air pollutant for which air quality criteria have not been issued or which is not included on a list published under section 108(a) of the CAA, but to which a standard of performance would apply if such existing source were a new source. CAA Section 111(d) also requires states to provide in their plans the implementation and enforcement of such standards of performance. In addition, CAA section 111(d)(2)(A) provides EPA with the authority to establish and enforce a plan in cases where the state fails to submit a satisfactory plan. 40 CFR section 62.13 addresses instances where a state has failed to submit a satisfactory plan. Commenter should reference 40 CFR section 62.13(b) which states, "[a]fter June 21, 2021, per paragraph (j) of this section, the substantive requirements of the MSW landfills Federal plan are contained in subpart OOO of this part and owners and operators of MSW landfills must comply with subpart OOO of this part or a state/tribal plan implementing 40 CFR part 60, subpart Cf of this chapter..."

As stated in our proposal, Colorado's 111(d) state plan for MSW landfills meets all requirements under 40 CFR part 60, subpart Cf of this chapter. The commenter does not state that Colorado's 111(d) state plan for MSW landfills does not meet the requirements under 40 CFR part 60, subpart Cf of this chapter, but asks EPA to request that Colorado withdraw their state plan because it does not contain language for "legacy-controlled landfills." EPA is aware of the differences between Colorado's plan which meets the requirements for state plans under 40 CFR part 60, subpart Cf and the federal plan requirements under 40 CFR part 62, subpart OOO.

We have discussed these differences in detail with Colorado, but whether or not Colorado addresses these changes remains at their discretion since Colorado is in compliance with the requirements of 40 CFR part 60, subpart Cf. Section 110(k)(3) of the CAA requires EPA to approve a plan if it meets all of the CAA applicable requirements for state implementation plans. Therefore, we are approving Colorado's 111(d) state plan for MSW landfills as meeting the requirements for 40 CFR part 60, subpart Cf of this chapter. Upon approval of Colorado's 111(d) plan, the Federal plan will no longer apply to MSW landfills in the State.

Comment: Commenter stated that establishing performance standards and operating requirements for MSW landfills is a necessary measure in tackling air pollution and that air pollutants from landfills can cause adverse health effects. Commenter further suggests that addressing these existing MSW landfills could help to achieve the National Ambient Air Quality Standards (NAAQS) that are often under non-attainment for various pollutants including carbon monoxide (CO), sulfur dioxide (SO₂), nitrogen oxide (NO_x), and more. CAA section 111(d) requires the EPA to establish procedures for requiring states to submit a plan that establishes standards for their existing sources. However, Executive Order 12898 states that section 111(d) does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects. The EPA's mission is to protect the environment and human health, so the commenter believes the EPA should have the authority to address these matters. The only way to achieve better regulations is for federal agencies to hold sources accountable for their emissions. Using evidence collected from a nearby MSW landfill of emissions in regard to human and environmental health, the EPA could uphold section 111(d) and aid in its overall effectiveness.

Response: 40 CFR part 60, subpart Cf addresses the emission guidelines and compliance timeframes for MSW landfills in accordance with section 111(d) of the CAA and subpart B. In particular, subpart Cf requires CAA 111(d) state plans to address the emissions of landfill gas for MSW landfills. Commenter suggests that Colorado's CAA 111(d) plan could help Colorado

achieve the NAAQS, however that is beyond the scope of CAA 111(d) and the regulations for MSW landfills (found in 40 CFR part 60, subpart Cf). Our authority in reviewing the State's submission is limited to evaluating whether it meets the requirements of the MSW landfill emission guidelines. We evaluated this in our proposal, finding that the State of Colorado met the requirements of the MSW landfill emission guidelines for landfill gas. *See* 86 FR 35044 (July 1, 2021) and related docket # EPA-R08-OAR-2021-0004. The EPA does not, in the context of this action, have the authority to require the State to regulate pollutants beyond "landfill gas," which is comprised primarily of carbon dioxide and methane, with smaller amounts of other gases, including nitrogen, oxygen, and non-methane organic compounds. CAA 111(d) state plans implementing the regulations under subpart Cf for emission guidelines do not cover the additional pollutants named by the commenter.

EPA acknowledges the commenter's desire for this action to address disproportionate human health and environmental effects, and as an agency, we strive to incorporate environmental justice considerations into our actions and decisions. However, since this action merely approves state law as meeting Federal requirements and does not impose any additional requirements, this action does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects. While the commenter states that the only way to achieve better regulations is for federal agencies to hold sources accountable for their emissions, we believe that we are holding MSW landfill sources accountable for their emissions with this Colorado plan since the state plan meets the requirements for MSW landfills under CAA 111(d) and 40 CFR part 60, subpart Cf.

III. Final Action

The EPA is finalizing approval of Colorado's CAA section 111(d) plan for MSW landfills. The state plan was submitted in full compliance with the requirements of 40 CFR part 60, subparts B and Cf. Therefore, the EPA is amending 40 CFR part 62, subpart G to reflect this approval action. This approval is based on the rationale provided in section II of the proposed

rule for this action (86 FR 35044) and discussed in detail in the TSD associated with this rulemaking action. The Agency's approval is in accordance with the general provisions of plan approval found in 40 CFR part 60, subpart B and in part 62, subpart A of that Title and is pursuant to the Agency's role under 42 U.S.C. 7411(d). The EPA's approval of the Colorado plan is limited to those landfills that meet the criteria established in 40 CFR part 60, subpart Cf and grants the State authority to implement and enforce the performance standards and source requirements of the EG, except in those cases where authorities are specifically reserved for the EPA Administrator or his designee. Authorities retained by the EPA Administrator are those listed in 40 CFR 60.30f(c).

IV. Incorporation by Reference

In accordance with the requirements of 1 CFR 51.5, we are finalizing regulatory text that includes the incorporation by reference of 5 CCR 1001-8 from the Code of Colorado Regulations (CCR), as effective on July 15, 2020. 5 CCR 1001-8 is part of the Colorado CAA section 111(d) state plan applicable to existing MSW landfills. The regulatory provisions of this section of the CCR incorporate the required CAA 111(d) state plan elements required by the EG for existing MSW landfills promulgated at 40 CFR part 60, subpart Cf. This incorporation establishes emission standards and compliance times for the control of air pollutants from certain MSW landfills that commenced construction, modification, or reconstruction on or before July 17, 2014. The emissions standards and compliance times established within this CCR section and the Colorado state plan are at least as stringent as those required by the EG for existing MSW landfills. The EPA has made, and will continue to make, 5 CCR 1001-8 (as well as the Colorado state plan documents for existing MSW landfills) generally available electronically through www.regulations.gov, Docket No. EPA-R08-OAR-2021-0004 and at the EPA Region 8 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). This incorporation by reference has been

approved by the Office of the Federal Register and the Plans are federally enforceable under the CAA as of the effective date of this final rulemaking.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve section 111(d) state plan submissions that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 40 CFR part 60, subparts B and Cf, and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the Colorado CAA 111(d) state plan for existing MSW landfills is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which

a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Landfills, Methane, Ozone, Reporting and recordkeeping requirements.

Dated: November 1, 2021.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

40 CFR part 62 is amended as follows:

**PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. Revise §§62.1350, 62.1351, and 62.1352 to read as follows:

§62.1350 Identification of plan.

Section 111(d) State Plan for Municipal Solid Waste Landfills and the associated State regulations contained in the Code of Colorado Regulations (CCR) at 5 CCR 1001-8 part A, subpart Cf (incorporated by reference, see §62.1490), submitted by the State on March 23, 2021.

§62.1351 Identification of sources.

The plan applies to all existing municipal solid waste landfills under the jurisdiction of the Colorado Department of Public Health and Environment for which construction, reconstruction, or modification was commenced on or before July 17, 2014, and are subject to the requirements of 40 CFR part 60, subpart Cf.

§62.1352 Effective date.

The effective date of the plan for existing municipal solid waste landfills is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

3. Add an undesignated center heading and §62.1490 to read as follows:

Incorporation by Reference

§62.1490 Incorporation by reference.

(a) The material incorporated by reference in this subpart was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material may be inspected or obtained from the EPA Region 8 office, 1595 Wynkoop Street, Denver, CO 80202-1129, 303-312-6312 or from the other sources listed in this section. It

may also be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fr.inspection@nara.gov or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(b) State of Colorado, Colorado Department of State, 1700 Broadway, Suite 550, Denver, CO 80290, (303) 894-2200, <https://www.sos.state.co.us/CCR/NumericalDeptList.do>, Code of Colorado Regulations (CCR).

(1) 5 CCR 1001-8, part A, subpart Cf: Department of Public Health and Environment – Air Quality Control Commission – Regulation Number 6 – Standards of Performance for New Stationary Sources – 5 CCR 1001-8. Part A – Federal Register Regulations Adopted by Reference, Subpart Cf – Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 40 CFR Part 60, Subpart Cf (July 1, 2019), as amended March 26, 2020; effective July 15, 2020; IBR approved for §62.1350.

(2) [Reserved]

[FR Doc. 2021-24207 Filed: 11/8/2021 8:45 am; Publication Date: 11/9/2021]